IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8491 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

DISTRICT LEPROSY OFFICER

Versus

ANIL RAYJEE NANAVATI

Appearance:

MS. GAJJAR, AGP for Petitioner

SERVED for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 06/09/96

ORAL JUDGEMENT

1. The petitioner challenges the award dated 6th June, 1992 of the Labour Court, Valsad, directing the reinstatement of the respondent employee to his original position with back wages from 10.7.1989.

2. The respondent-employee came to be appointed on temporary basis as Dresser (Class IV) in the pay scale of

Rs.800 -1500 by an order dated 8th July, 1988, passed by the petitioner District Leprosy Officer. It was mentioned in the order of appointment that the appointment was purely on temporary basis and on probation for one year and that it could be terminated at any time. It was also stipulated that the appointment could be continued on long term basis if the employee completed the probation period satisfactorily. Thereafter by order dated 8th July, 1989 made by the Medical Officer, Dharampur, the services of the respondent-employee were terminated w.e.f. 10th July, 1989 on the ground that one year's period had ended after 11.7.1989 when he had joined this duty under the order of appointment. A Reference came to be made against this termination to the Labour Court, Valsad on 22nd September, 1989. The Labour Court held that the services of the respondent-employee were terminated by an authority subordinate to the appointing authority and that there was nothing to show that the termination was due to unsatisfactory work during the probation period. A preliminary contention was raised before the Labour Court by the application Exhibit-11 that it had no jurisdiction to hear the Reference as the leprosy unit at Dharampur was not an `industry' and was run by the grant given by the Central Government. The Tribunal by a reasoned order dated 20th December, 1991 rejected that application holding that it had jurisdiction to entertain the Reference in view of the decision of the Apex Court in BANGALORE WATER SUPPLY AND SEWERAGE v. RAJAPPA, reported in AIR 1978 SC 548 holding that if charitable projects and other kindered adventure, fulfil the triple tests listed by the Supreme Court, they cannot be exempted from the scope of Sec. 2(j) of the Industrial Disputes Act. Even in the impugned award by referring to the earlier order made below Exhibit 11, the Tribunal reiterated that it had jurisdiction to entertain the Reference.

3. At the hearing of this petition, the learned Assistant Government Pleader strongly contended that the Tribunal had no jurisdiction to hear the Reference in view of the fact that the leprosy unit at Dharampur was run from the 100 per cent grant of the Central Government on no profit no loss basis and, therefore, it cannot be described as an "industry" within the meaning of Section 2(j) of the said Act. She contended that this activity was carried on only on a humane mission by men who worked not because they were paid wages but because they share the passion for the cause and derive job satisfaction. It is difficult to hold that the District Leprosy Officer who is the appointing authority of the respondent or the

Government running the said unit were actuated by any passion for the cause and for deriving job satisfaction on a humane mission. The activity certainly was not a pious or altruistic mission, which is carried on free or for small honoraria mainly drawn by sharing in the purpose or cause, such as doctors serving in their spare hours in a free medical centre not engaged for remuneration or on the basis of master and servant relationship. In the present case, there clearly was a master and servant relationship as can be seen from the order of appointment of the respondent - employee. The leprosy unit at Dharampur was carrying on a systematic activity organised by cooperation between employer and employee for the purpose of rendering services to the leprosy patients. Therefore, it passes the triple test prescribed in Bangalore Water Supply and Sewerage case (supra) and was an industry within the meaning of Section 2(j) of the Act.

4. The learned Assistant Government Pleader further argued that the appointment of the respondent employee was made purely on a temporary basis and on probation for one year and, therefore, the appointment came to an end by efflux of time. She contended that even if the ultimate order was issued by the Medical Officer, that was done at the behest of the District Leprosy Officer and, therefore, in reality, the termination order is deemed to have been issued by the appointing authority. The District Leprosy Officer had issued the order of appointment of the respondent - employee and there being a constitutional guarantee under Article 311(1) to the effect that such employee will not be removed by an authority subordinate to that by which he was appointed, no officer subordinate to the District Leprosy Officer could have removed the respondent- employee. Admittedly, the Medical Officer was an officer subordinate to the District Leprosy Officer. There is no contemporaneous record to show that the District Leprosy Officer had in fact made the order of termination in the files. It is not even the case of the petitioner that the petitioner District Leprosy Officer had passed any order and that the Medical officer had only communicated it. From the impugned order it clearly transpires that the Medical Officer has purportedly passed that order which he had no authority to do. The order of termination was therefore ex facie bad and the Tribunal rightly held it to be invalid.

5. The learned Assistant Government Pleader contended that the performance of the respondent employee was not satisfactory and that is why his services were

terminated as stipulated in the order of appointment itself. In support of her contention that the termination was valid, she placed reliance on the decisions of the Supreme Court in MADHYA PRADESH HASTA SHILPA VIKAS NIGAM LTD v. DEVENDRA KUMAR JAIN, reported in (1995) 1 SCC 638, STATE OF U.P. v. U.P. STATE LAW OFFICERS ASSOCIATION, reported in (994) 2 SCC 204, and STATE OF U.P. v. PREM LATA MISRA, reported in 1994 SC 2411.

6. In the order of respondent - employee's appointment, it was made clear that he was appointed on probation for a period of one year. In the order terminating his services, it was stated that his services were terminated because one year's period for which he was appointed had expired. The order of termination indicates that the Medical officer who issued that order was under the impression that the services of the respondent - employee were to be terminated by efflux of time i.e. on the expiry of a period of one year. There is a difference between appointment for a fixed period of one year and appointment on probation for a period of one year. An appointment on probation for a period of one year, it is not the same thing as an appointment for a fixed period of one year. An appointment for a fixed period of one year would come to an end on the expiry of one year while an appointment on probation can continue even beyond the period of probation by extending the probation or by issuing appointment on a long term basis on satisfactory completion of the probation period. There is therefore no automatic cessation of service on the expiry of probation period in such cases. Therefore, the impugned order of termination of respondent employee's service which was issued on the sole ground of completion of one year as stated in it, was wholly erroneous and cannot be said to be an order of termination passed because of unsatisfactory performance during the probation period,by the respondent - employee. The Tribunal has rightly noted that during the period of probation, there was not even a memo issued to the respondent- employee and there was nothing to indicate that his performance during that period was not satisfactory.

7. In Madhya Pradesh Hasta Shilpa Vikas (supra) it was held that when appointment is made on a temporary basis, it is not necessary to follow the formalities contemplated by Article 311(2) of the Constitution. In State of U.P. v. U.P. State Law Officers Association (supra) the court was concerned with relationship between the lawyer and his client and in that context it was held

that the appointment could be terminated at any time as stipulated in the contract. In State of U.P. v. Prem Lata Misra (supra), the Supreme Court held that it was a settled legal position that the Court can lift the veil of the innocuous order to find whether it is the foundation or motive to pass the offending order. In this view of the matter the aforesaid decisions cited on behalf of the petitioner cannot help the petitioner.

10. Under the circumstances, the petition must fail. Rule is discharged with no order as to costs. Interim directions stand vacated.
